

Title 2. Administration
Division 1. Administrative Personnel
Chapter 3. Department of Human Resources
Subchapter 1. General Civil Service Rules
Article 27. 457 Deferred Compensation Plan
Section 599.943 Savings Plus Program Contract Periods

DEPARTMENT OF HUMAN RESOURCES INITIAL STATEMENT OF REASONS

I. Purpose and Rationale for the Proposed Regulatory Changes

The proposed amendment modifies California Code of Regulations section 599.943 to recognize that a different requirement applies to CalHR, which does not specifically follow the State's standard competitive bid process. This amendment allows Savings Plus Program to comply with the state's competitive bidding process and for the program to be nimble when needed. Where there is a high risk of an investment manager losing assets, the Savings Plus Program should be permitted to utilize a modified competitive search process to select a replacement investment manager to manage program assets. This flexibility allows the Savings Plus Program to meet its fiduciary obligations and safeguard program assets.

II. Technical, Theoretical, and/or Empirical Study, Reports, or Documents

Statutes provide for a flexible competitive bidding process for the Savings Plus Program to follow. However, current regulatory language requires adherence to the state's competitive bidding process for contracts with investment firms. The current regulatory language limits necessary flexibility required for the program. While the Savings Plus Program closely follows the state's competitive bidding process, flexibility is necessary to utilize a modified search process when it is in the best interest of plan participants and/or recommended by the program's external investment consultant. For example, in the event that Savings Plus' investment monitoring consultant determines that an investment manager is at high-risk of losing assets, being restricted to the existing contracting process prohibits the Savings Plus Program from acting quickly and in the best interests of the program's participants.

III. Economic Impact Assessment/Analysis

Purpose

Public Contract Code (PCC) section 10430, subdivision (c), allows CalHR flexibility in the competitive bid process for contracts for state employee benefits, including voluntary retirement savings plans for state employees. Specifically, PCC section 10430 provides that Chapter 2, Part 2, Division 2, of the PCC, regarding state acquisition for goods and services does not apply to "any entity exempt from PCC section 10295." Further, PCC section 10295, subdivision (c)(4) exempts CalHR from obtaining Department of General Services' approval prior to awarding a contract. However, CalHR is required to comply with PCC section 10344.1, which requires the program to provide "all qualified bidders with a fair opportunity to enter the bidding process" and to follow additional state contracting best practices to the extent feasible.

Despite the flexibility provided by PCC section 10344.1, California Code of Regulations (CCR), title 2, section 599.943 requires the Savings Plus Program to comply with the state's competitive bid process when selecting an investment firm for a new contract. Thus, section 599.943 does not presently align with the PCC, which provides CalHR a flexible approach to the competitive bidding requirements.

Creation or Elimination of Jobs Within the State of California

Section 599.943 does not presently align with the PCC, which provides CalHR a flexible approach to the competitive bidding requirements. The proposed regulatory change may have an impact on investment firms that may be interested in contracting with the Savings Plus Program; however, the proposed regulatory change does not extend to any program affecting the general public. Therefore, the proposed amended regulation will not affect the creation or elimination of jobs within the State of California.

The Creation of New Business or the Elimination of Existing Businesses Within the State of California

Section 599.943 does not presently align with the PCC, which provides CalHR a flexible approach to competitive bidding requirements. The proposed regulatory change may have an impact on investment firms that may be interested in contracting with the Savings Plus Program; however, the proposed regulatory change does not extend to any program affecting the general public. Therefore, the proposed amended regulation will not affect the creation or elimination of new business within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

Section 599.943 does not presently align with the PCC, which provides CalHR a flexible approach to competitive bidding requirements. The proposed regulatory change may have an impact on investment firms that may be interested in contracting with Savings Plus; however, the proposed regulatory change does not extend to any program affecting the general public. Therefore, the proposed amended regulation will not affect the expansion of new business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

Section 599.943 does not presently align with the PCC, which provides CalHR a flexible approach to competitive bidding requirements. The proposed regulatory change may have an impact on investment firms that may be interested in contracting with Savings Plus; however, the proposed regulatory change does not extend to any program that affects the general public. Therefore, the proposed amended regulation will not affect the expansion of new business within the State of California.

IV. Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business

CalHR has found no evidence that the amended regulation would impose a significant statewide adverse economic impact affecting business.

V. Reason alternatives to the Regulation and the Agency's Reasons for Rejecting those Alternatives

The alternative is to leave the regulation as currently read. This alternative does not resolve the identified problem as it continues to mandate more stringent bidding requirements than required by

law, and does not provide the Savings Plus Program the necessary flexibility to meet its fiduciary requirements.